

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-20263

Honorable Victoria A. Roberts

LSHONDRA MCKINNEY,

Defendant.

_____ /

ORDER DENYING DEFENDANT'S MOTION
FOR COMPASSIONATE RELEASE [ECF No. 96]

Upon motion of ☒ the Defendant ☐ the Director of the Bureau of Prisons for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission, IT IS ORDERED that the motion is: ***See pages 4-6.***

☐ **GRANTED**

☐ The defendant's previously imposed sentence of imprisonment of _____ is reduced to _____. If this sentence is less than the amount of time the defendant already served, the sentence is reduced to a time served; or

☐ Time served.

If the defendant's sentence is reduced to time served:

☐ This order is stayed for up to fourteen days, for the verification of the defendant's residence and/or establishment of a release plan, to make appropriate travel arrangements, and to ensure the defendant's safe release. The defendant shall be released as soon as a residence is verified, a release plan is established, appropriate travel arrangements are made, and it is safe for the defendant to travel. There shall be no delay in ensuring travel arrangements are made. If more than fourteen days are needed to make appropriate travel arrangements and ensure the defendant's safe release, the parties shall immediately notify the court and show cause why the stay should be extended; or

☐ There being a verified residence and an appropriate release plan in place, this order is stayed for up to fourteen days to make appropriate travel arrangements and to ensure the defendant's safe release. The defendant shall be released as soon as appropriate travel arrangements are made and it is safe for the defendant to travel. There shall be no delay in ensuring travel arrangements are made. If more than fourteen days are needed to make appropriate travel

arrangements and ensure the defendant's safe release, then the parties shall immediately notify the court and show cause why the stay should be extended.

☐ The defendant must provide the complete address where the defendant will reside upon release to the probation office in the district where they will be released because it was not included in the motion for sentence reduction.

☐ Under 18 U.S.C. § 3582(c)(1)(A), the defendant is ordered to serve a "special term" of ☐ probation or ☐ supervised release of _____ months (not to exceed the unserved portion of the original term of imprisonment).

☐ The defendant's previously imposed conditions of supervised release apply to the "special term" of supervision; or

☐ The conditions of the "special term" of supervision are as follows:

☐ The defendant's previously imposed conditions of supervised release are unchanged.

☐ The defendant's previously imposed conditions of supervised release are modified as follows:

☐ **DEFERRED** pending supplemental briefing and/or a hearing. The court DIRECTS the United States Attorney to file a response on or before _____, along with all Bureau of Prisons records (medical, institutional, administrative) relevant to this motion.

☒ **DENIED** after complete review of the motion on the merits.

☒ **FACTORS CONSIDERED** (Optional)

The compassionate release statute only allows the Court to modify a defendant's term of imprisonment if, among other things, "extraordinary and compelling reasons warrant such a reduction [or release]." *See* 18 U.S.C. § 3582(c)(1)(A)(i).

Lshondra McKinney says she has underlying medical conditions which constitute extraordinary and compelling reasons for her release because they place

her at an increased risk of severe illness and death from a COVID-19 infection.

Particularly, McKinney says she is obese and has asthma.

While the Centers for Disease Control and Prevention indicates that obesity – i.e., a BMI of 30 or greater – and asthma are conditions which place a person at a higher risk of severe illness from COVID-19, McKinney fails to demonstrate an extraordinary and compelling reason for her release. McKinney does not provide any evidence showing that she is “obese” or has asthma, and the government produces her medical records, which demonstrate that she has neither condition.

In her reply, McKinney points to two encounters where she complained of chest aches and shortness of breath and says that she “attributed these encounters to asthma, for lack of another diagnosis.” However, the medical records McKinney cites to for those encounters also note that her lungs were clear upon examination, her respirations were even and unlabored, and that McKinney said a previous medical provider attributed her chest pain to anxiety. Notably, there is no diagnosis – let alone, mention of – asthma.

With respect to her alleged obesity, McKinney said in her motion – filed February 3, 2021 – that she is “awaiting medical confirmation of her most recent BMI of 30.4.” The government pointed out that McKinney failed to provide any evidence of obesity. In her reply brief, McKinney cited a medical record showing that her BMI was 28.9 as of August 24, 2020. McKinney failed to mention

anything about the 30.4 BMI result she was “awaiting medical confirmation of.” Rather, she says the 28.9 BMI is outdated and that she wants the Court to order the Department of Justice to conduct an up-to-date assessment of her weight and BMI. This shows that McKinney’s statement that she had a BMI of 30.4 – which she supposedly was awaiting confirmation of – was a misrepresentation; otherwise, she would not say she needed an up-to-date assessment conducted.

McKinney fails to show she has a medical condition that places her at an increased risk of severe illness or death if she contracts COVID-19. Thus, she fails to demonstrate an extraordinary and compelling reason for her release. *See United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (“[T]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release.”).

Because McKinney fails to demonstrate an extraordinary and compelling reason for her release, the Court **DENIES** her motion.

☐ **DENIED WITHOUT PREJUDICE** because the defendant has not exhausted all administrative remedies as required in 18 U.S.C. § 3582(c)(1)(A), nor have 30 days lapsed since receipt of the defendant’s request by the warden of the defendant’s facility.

IT IS ORDERED.

s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: March 16, 2021